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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/820,985	04/08/2004	Jerry Snider	PGI6044P2581US	9038
32116	7590	05/03/2005	EXAMINER	
WOOD, PHILLIPS, KATZ, CLARK & MORTIMER 500 W. MADISON STREET SUITE 3800 CHICAGO, IL 60661			DANIELS, MATTHEW J	
			ART UNIT	PAPER NUMBER
			1732	

DATE MAILED: 05/03/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

10/820,985

Applicant(s)

SNIDER ET AL.

Examiner

Matthew J. Daniels

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 08 April 2004.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-12 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-12 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date 23 August 2004.
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_.

### **DETAILED ACTION**

1. The Applicant is advised that the priority claim of USPN 6753063 (to provisional application 60/066207) has been considered and appears to be valid for those portions of USPN 6753063 relied upon.

#### ***Information Disclosure Statement***

2. The Applicant's information disclosure statement appears to contain an error in the number of USPN 5244711. The Examiner has indicated what appears to be the appropriate number on the Applicant's information disclosure statement.

3. The listing of references in the specification is not a proper information disclosure statement. 37 CFR 1.98(b) requires a list of all patents, publications, or other information submitted for consideration by the Office, and MPEP § 609 A(1) states, "the list may not be incorporated into the specification but must be submitted in a separate paper." Therefore, unless the references have been cited by the examiner on form PTO-892, they have not been considered.

#### ***Claim Objections***

4. **Claims 2, 5, 8 and 11** are objected to under 37 CFR 1.75(c), as being of improper dependent form for failing to further limit the subject matter of a previous claim. Applicant is required to cancel the claim(s), or amend the claim(s) to place the claim(s) in proper dependent form, or rewrite the claim(s) in independent form. In each case, the Applicant claims aqueous or

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non-aqueous. The Examiner's position is that every substance is one or the other (aqueous or non-aqueous), thus, there is no further limitation of the previous claims.

### ***Double Patenting***

The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and, *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

5. **Claims 1, 4, 7, 10** are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claim 1 of copending application number 10/431,142. Although the conflicting claims are not identical, they are not patentably distinct from each other because both applications claim a method for making a nonwoven fabric by applying hydraulic energy to the precursor web to simultaneously entangle and impart a first and second intercalated three-dimensional images. The instant set of claims appears to be a final process, while the process sought in 10/431142 appears to be the intermediate stage of entanglement only. However, the subject matter sought still overlaps with the instant application. The movable imaging surface of the '142 application would have inherently been present in the instant case to cause the same entanglement.

***Claim Rejections - 35 USC § 112***

6. **Claims 2, 5, 8, 11** are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. Applicant claims “aqueous liquid” in Step b of each respective parent claim (Claims, 1, 4, 7, and 10). Therefore, these claims are indefinite because they contradict Step b of their respective parent claims when non-aqueous compositions are used.

***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

7. **Claims 1-12** are rejected under 35 U.S.C. 102(e) as being anticipated by Pung (USPN 6753063). Intended use recitations in the preamble have not been given patentable weight because the article produced by the method of Pung would have inherently been capable of performing all intended uses. **As to Claim 1**, Pung teaches a method for making a nonwoven home care cleaning article comprising the steps of providing a nonwoven fabric, wherein the nonwoven fabric is subjected to hydraulic energy upon a three-dimensional image transfer device (3:1-20) so as to simultaneously entangle (2:64-67) and impart at least a first three-dimensional image and a second three-dimensional image (3:1-20 and 4:1-10) into the fabric forming a nonwoven fabric with intercalated three-dimensional images (See interpretation of inherency

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below); and a cleansing composition comprising an effective amount of a cleansing surfactant (4:31), the aqueous liquid cleansing composition being coated onto or impregnated into the substrate (2:17-30) to the extent of from 50% to 500% by weight of the substrate (Abstract, 100% to 400%).

The Examiner interprets the Applicant's claim to have no particularly shaped first and second images. As evidence, the Examiner cites the dictionary definition of an "image" to be a reproduction or imitation of the form of a person or thing. A first and second image may have the same imitation of form. As further evidence, the Examiner cites the dictionary definition of "intercalate" to be inserted between or among existing elements or layers. The Examiner cites Pung's teaching of "some of the raised fibrous regions are substantially the same as the basis weight of the base surface and the basis weight of other raised fibrous regions are greater than the basis weight of the base surface." (emphasis added by Examiner, 4:4-7) In the Examiner's interpretation, each raised fibrous region is an image. In view of the fact that Pung teaches at least two of each type of raised fibrous region, there are at least both first and second 3-dimensional images. In any arrangement of fibrous images comprised of four or more, as taught by Pung, at least one will exist between or among two others, meeting the Applicant's claim to intercalated images. **As to Claim 2**, Pung teaches an aqueous composition (2:25). **As to Claim 3**, Pung teaches a cleansing composition selected from fragrances and organic solvents (15:18 and 18:43) or a combination thereof.

8. **As to Claim 4**, Pung teaches a method for making a nonwoven home care cleaning article comprising the steps of providing a nonwoven fabric, wherein the nonwoven fabric is

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subjected to hydraulic energy upon a three-dimensional image transfer device (3:1-20) so as to simultaneously entangle (2:64-67) and impart at least a first three-dimensional image and a second three-dimensional image (3:1-20 and 4:1-10) into the fabric forming a nonwoven fabric with intercalated three-dimensional images (See interpretation of inherency below); and a cleansing composition comprising an effective amount of a cleansing surfactant (4:31), the aqueous liquid cleansing composition being coated onto or impregnated into the substrate (2:17-30) to the extent of from 50% to 500% by weight of the substrate (Abstract, 100% to 400%).

The Examiner interprets the Applicant's claim to have no particularly shaped first and second images. As evidence, the Examiner cites the dictionary definition of an "image" to be a reproduction or imitation of the form of a person or thing. A first and second image may have the same imitation of form. As further evidence, the Examiner cites the dictionary definition of "intercalate" to be inserted between or among existing elements or layers. The Examiner cites Pung's teaching of "some of the raised fibrous regions are substantially the same as the basis weight of the base surface and the basis weight of other raised fibrous regions are greater than the basis weight of the base surface." (emphasis added by Examiner, 4:4-7) In the Examiner's interpretation, each raised fibrous region is an image. In view of the fact that Pung teaches at least two of each type of raised fibrous region, there are at least both first and second 3-dimensional images. In any arrangement of fibrous images comprised of four or more, as taught by Pung, at least one will exist between or among two others, meeting the Applicant's claim to intercalated images. **As to Claim 5**, Pung teaches an aqueous composition (2:25). **As to Claim 6**, Pung teaches a cleansing composition selected from vitamins and antioxidants (18:35) or a combination thereof.

9. As to Claim 7, Pung teaches a method for making a nonwoven industrial cleaning article comprising the steps of providing a nonwoven fabric, wherein the nonwoven fabric is subjected to hydraulic energy upon a three-dimensional image transfer device (3:1-20) so as to simultaneously entangle (2:64-67) and impart at least a first three-dimensional image and a second three-dimensional image (3:1-20 and 4:1-10) into the fabric forming a nonwoven fabric with intercalated three-dimensional images (See interpretation of inherency below); and a cleansing composition comprising an effective amount of a cleansing surfactant (4:31), the aqueous liquid cleansing composition being coated onto or impregnated into the substrate (2:17-30) to the extent of from 50% to 500% by weight of the substrate (Abstract, 100% to 400%).

The Examiner interprets the Applicant's claim to have no particularly shaped first and second images. As evidence, the Examiner cites the dictionary definition of an "image" to be a reproduction or imitation of the form of a person or thing. A first and second image may have the same imitation of form. As further evidence, the Examiner cites the dictionary definition of "intercalate" to be inserted between or among existing elements or layers. The Examiner cites Pung's teaching of "some of the raised fibrous regions are substantially the same as the basis weight of the base surface and the basis weight of other raised fibrous regions are greater than the basis weight of the base surface." (emphasis added by Examiner, 4:4-7) In the Examiner's interpretation, each raised fibrous region is an image. In view of the fact that Pung teaches at least two of each type of raised fibrous region, there are at least both first and second 3-dimensional images. In any arrangement of fibrous images comprised of four or more, as taught by Pung, at least one will exist between or among two others, meeting the Applicant's claim to



intercalated images. **As to Claim 8**, Pung teaches an aqueous composition (2:25). **As to Claim 9**, Pung teaches a cleansing composition selected of paraffinic solvents (18:15-16).

10. **As to Claim 10**, Pung teaches a method for making a nonwoven medical cleaning article comprising the steps of providing a nonwoven fabric, wherein the nonwoven fabric is subjected to hydraulic energy upon a three-dimensional image transfer device (3:1-20) so as to simultaneously entangle (2:64-67) and impart at least a first three-dimensional image and a second three-dimensional image (3:1-20 and 4:1-10) into the fabric forming a nonwoven fabric with intercalated three-dimensional images (See interpretation of inherency below); and a cleansing composition comprising an effective amount of a cleansing surfactant (4:31), the aqueous liquid cleansing composition being coated onto or impregnated into the substrate (2:17-30) to the extent of from 50% to 500% by weight of the substrate (Abstract, 100% to 400%).

The Examiner interprets the Applicant's claim to have no particularly shaped first and second images. As evidence, the Examiner cites the dictionary definition of an "image" to be a reproduction or imitation of the form of a person or thing. A first and second image may have the same imitation of form. As further evidence, the Examiner cites the dictionary definition of "intercalate" to be inserted between or among existing elements or layers. The Examiner cites Pung's teaching of "some of the raised fibrous regions are substantially the same as the basis weight of the base surface and the basis weight of other raised fibrous regions are greater than the basis weight of the base surface." (emphasis added by Examiner, 4:4-7) In the Examiner's interpretation, each raised fibrous region is an image. In view of the fact that Pung teaches at least two of each type of raised fibrous region, there are at least both first and second 3-

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dimensional images. In any arrangement of fibrous images comprised of four or more, as taught by Pung, at least one will exist between or among two others, meeting the Applicant's claim to intercalated images. **As to Claim 11**, Pung teaches an aqueous composition (2:25). **As to Claim 12**, Pung teaches a cleansing composition selected from abrasives and alcohols (18:15 and 18:34) or a combination thereof.


### *Conclusion*

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Matthew J. Daniels whose telephone number is (571) 272-2450. The examiner can normally be reached on Monday - Friday, 8:00 am - 5:30 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Michael Colaianni can be reached on (571) 272-1196. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

MJD 4/21/05



**MICHAEL P. COLAIANNI**  
**SUPERVISORY PATENT EXAMINER**